ture, they must be sustained by the Court, notwithstanding partial invalidity. The invalid parts, however, may be dropped only where the part which is retained is fully operative as a law. And where the invalid and the valid parts are independent and essentially and inseparably connected in substance, there is a strong presumption that the Legislature would not have enacted one part without the other, and the entire statute will fall.

A similar result will occur where all the provisions of an Act are connected as parts of a single scheme. In such a case, if the main object or purpose is invalid, those provisions which are incidental will also fall. But in any instance, there is a presumption that the Legislature intended for the statute or Act to be effective in its entirety, unless something in the Act indicates to the contrary."

Finally, if contrary to my above conclusions:

1) sections 15 & 16 of the Amending Act have retrospective operation;
2) the saving provisions of section 30(1) of the *Interpretation Act* do not apply, and
3) Article 7(1) cannot be prayed in aid of these accused persons,

then, it is my opinion, that the Attorney-General having elected for trial in the Sessions Court, sections 15 & 16 come within the constitutional inhibitions of Article 145(3).

In the result, reason and justice combine to indicate that both the Orders of Transmission are illegal, void and of no effect; they are accordingly quashed, all the cases concerned restored to the Sessions Court, Penang, with a direction to hear and determine them according to law, as expeditiously as possible. The accused persons are, in the meanwhile, remanded in custody pending the final determination of their respective trials.

Order accordingly.

Solicitors: *R. Rajasingam & Co.; Kumar & Co.; Karpal Singh & Co.;*

HONG LIANG TING & ORS. v. CHINA INSURANCE CO. LTD.

[O.C.J. (Siti Norma Yaakob J.) June 27, 1984]

[Kuala Lumpur – Civil Suit No. P94 of 1981]

Insurance – Negligence – Owner of lorry found negligent – Personal representatives of deceased sought to enforce judgment against insurers under third-party policy – Whether deceased was in the lorry in pursuance of contract of employment – Road Traffic Ordinance 1958, s. 75.

Road Traffic – Insurance – Third-party policy – Scope of Road Traffic Ordinance 1958, s. 75.

The plaintiffs, as the personal representatives of the deceased, sought to enforce a judgment against the defendants on the grounds that as insurers, the defendants were liable to indemnify the owner of a lorry against whom judgment for damages in negligence had been given. The owner of the lorry had insured his lorry with the defendants under a third-party policy pursuant to section 75 of the Road Transport Ordinance 1958 which excepted liability for death caused to any person carried on the lorry other than a passenger carried by reason of or in pursuance to a contract of employment.

Held, dismissing the plaintiff's claim: the deceased's presence on the lorry at the time of the accident cannot be said to be by reason of or in pursuance to a contract of employment. Since he was not covered by the policy, the defendants cannot be held liable to satisfy the judgment obtained by his personal representatives against the insured.

CIVIL SUIT.

David Tay for the plaintiffs.

V. Krishnan (*J. Indran* with him) for the defendants.

Cur. Adv. Vult.

Siti Norma Yaakob J.: In this action, the plaintiffs as the personal representatives of Hui Hong Ming, deceased, seek to enforce a judgment against the defendants on the grounds that as insurers, the defendants are liable to idemnify the owner of a lorry against whom judgment for damages in negligence had been given. The owner of the lorry had insured his lorry with the defendants under a third-party policy pursuant to section 75 of the Road Transport Ordinance 1958 which excepted liability for death caused to any person carried on the lorry other than a passenger carried by reason of or in pursuance to a contract of employment. It is on this exception to section 75 that the defendants seek to disclaim liability by asserting that the deceased was not in the lorry by reason of or in pursuance of a contract of employment. The defendants raised other defences

as well but at the trial relied only on the exception to section 75 and since the facts were in no way disputed, Counsel were content to submit on the only issue as to whether the deceased was in the lorry by reason of or in pursuance of a contract of employment.

At the time of the accident on June 26, 1969, the insured was the owner of a smoke house as well as the lorry, AJ 2418, which he had insured with the defendants. He used this lorry to transport wet rubber sheets to the smoke house and also to transport smoked rubber sheets to a shop in Ayer Tawar where the sheets were eventually sold. The deceased was a rubber smallholder and he had some business arrangements with the insured whereby he used the insured's smoke house to dry his rubber sheets and also the insured's lorry to transport his smoked rubber sheets to Air Tawar where they were sold.

The smoke house was constructed on stilts to allow the back portion of the lorry to be driven underneath the smoke house to facilitate the unloading of the wet rubber sheets. On the day of the accident, the lorry was so parked and the deceased was in the lorry assisting the insured in unloading wet rubber sheets. Once the unloading was over, he was to load his own smoked sheets into the lorry to be transported to Ayer Tawar. Before doing so, he had placed a zinc sheet to cover the wet floor board and it was only after this that the deceased was able to start loading his own smoked sheets into the lorry. For this purpose, the back portion of the lorry had to be driven from underneath the smoke house so that the smoked sheets could be thrown from the smoke house into the back of the lorry. The insured got into the lorry and without ascertaining whether the gear was in neutral position, started the engine. The gear was in fact in a reverse position and at the start of the engine, the lorry jerked backwards causing the deceased who was standing immediately behind the cabin of the lorry to be thrown backward and his head was crushed in between the cross-beam of the smoke house and the cabin of the lorry.

On these facts, I shall now consider whether the deceased's presence on the lorry at the time of the accident was by reason of or in pursuance to a contract of employment. It is not disputed that the deceased was not employed by the insured or for that matter by anybody else. He was at the smoke house regularly as he had some business arrangements with the insured as to the use of the smoke house to dry his wet rubber sheets and to transport his own smoked sheets to Ayer Tawar by using the insured's lorry. As far as I can see, this business arrangement particularly with regard to the use of the insured's lorry concerned the transportation of the deceased's own goods to Ayer Tawar and it did not relate to a contract of employment at all. That being the case, the deceased's presence on the lorry at the time of the accident cannot be said to be by reason of or in pursuance to a contract of employment. Since he was not covered by the policy, the defendants cannot be held liable to satisfy the judgment obtained by his personal representatives against the insured. As such, this action must fail and I accordingly dismiss it with costs.

Claim dismissed.

Solicitors: *Murphy & Dunbar; Mah Kok & Din.*

LAW MUN & ORS. v. CHUA LAI SENG & ORS.

[O.C.J. (Shankar J.) June 28, 1984]

[Muar – Civil Suit No. 197 of 1983]

Practice & Procedure – Summons for Directions – Failure of plaintiff to take out – Effect of – R.H.C. 1980, O.25 r.1(4) & O.34 rr.2(2) & 8(1).

Legal Profession – $1 million fee charged by solicitor – Proceedings against solicitor – Conditional leave to defend.

Practice & Procedure – Summary judgment application – Conditional leave to defend – "Liberty to apply" – Meaning of.

On July 20, 1983 the plaintiffs filed action for the recovery of $1 million with interest thereon. They claimed that in 1981 they first entered into an agreement with the first and second defendants for the sale of their shares in Inroad Housing Sdn. Bhd. for a consideration of $6 million. After this agreement had been entered into, the first and second defendants persuaded the plaintiffs to enter into a second agreement the terms of which were substantially the same. However, the third defendant was also a party to the second agreement. All the 3 defendants now became jointly and severally liable to the plaintiffs for the full purchase price of $6 million. In this transaction the first defendant acted as the solicitor both for the plaintiffs as vendors and for the defendants as purchasers. The full sum of $6 million was at some stage in the first defendant's hands. But only $5 million reached the plaintiffs. The balance of $1 million did not. The first defendant did